

The Honorable Benjamin H. Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

THE GEO GROUP, INC.,

Plaintiff,

v.

JAY R. INSLEE, in his official capacity as
Governor of the State of Washington;
ROBERT W. FERGUSON, in his official
capacity as Attorney General of the State of
Washington,

Defendants.

NO. 3:23-cv-05626-BHS

DEFENDANTS' ANSWER TO
THE GEO GROUP, INC.'S
COMPLAINT

Under Fed. R. Civ. P. 8(b), Defendants Governor Jay Inslee, Governor of the State of Washington and Attorney General Robert W. Ferguson, (Defendants) generally deny each allegation of fact in Plaintiff's Complaint unless the allegation of fact is expressly admitted. Defendants will not respond to legal arguments in the Complaint and will deny any allegation if it is unclear whether Plaintiff is asserting a factual or legal claim. Defendants reserve the right to amend this pleading as permitted by this Court's rules and orders, including Fed. R. Civ. P. 15.

NATURE OF THIS ACTION

1. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. To the extent a further response is required,

1 Defendants admit that The GEO Group filed a lawsuit challenging Second Substitute H.B. 1470
 2 (HB 1470), 68th Leg., Reg. Sess. (Wash. 2023).

3 2. This Paragraph asserts legal conclusions and questions of law to be determined
 4 by the Court, to which no response is required. To the extent a response is required, denied.

5 3. This Paragraph asserts legal conclusions and questions of law to be determined
 6 by the Court, to which no response is required. To the extent that a response is required,
 7 Defendants admit *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 426 (1819), and *Hancock v.*
 8 *Train*, 426 U.S. 167, 178 (1976) are case citations, which speak for themselves. To the extent a
 9 further response is required, denied.

10 4. This Paragraph asserts legal conclusions and questions of law to be determined
 11 by the Court, to which no response is required. To the extent that a response is required,
 12 Defendants admit *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 426 (1819), and *Crosby v.*
 13 *National Foreign Trade Council*, 530 U.S. 363, 372 (2000) are case citations, which speak for
 14 themselves. To the extent a further response is required, denied.

15 5. This Paragraph asserts legal conclusions and questions of law to be determined
 16 by the Court, to which no response is required. To the extent that a response is required,
 17 Defendants admit that *Wong v. United States*, 163 U.S. 228, 235 (1896) is a case citation, which
 18 speaks for itself. To the extent a further response is required, denied.

19 6. This Paragraph asserts legal conclusions and questions of law to be determined
 20 by the Court, to which no response is required. To the extent a further response is required,
 21 denied.

22 7. This Paragraph asserts legal conclusions and questions of law to be determined
 23 by the Court, to which no response is required. To the extent a further response is required,
 24 denied.

25 8. This Paragraph asserts legal conclusions and questions of law to be determined
 26 by the Court, to which no response is required. To the extent a further response is required,

1 Defendants are without information sufficient to form a belief as to the truth of the remaining
2 allegations in this Paragraph, and therefore denies.

3 9. This Paragraph asserts legal conclusions and questions of law to be determined
4 by the Court, to which no response is required. To the extent a further response is required,
5 denied.

6 JURISDICTION AND VENUE

7 10. This Paragraph asserts legal conclusions and questions of law to be determined
8 by the Court, to which no response is required.

9 11. This Paragraph asserts legal conclusions and questions of law to be determined
10 by the Court, to which no response is required. The cited statute, 28 U.S.C. § 1331, speaks for
11 itself. To the extent a further response is required, denied.

12 12. This Paragraph asserts legal conclusions and questions of law to be determined
13 by the Court, to which no response is required. The cited statute, 28 U.S.C. § 1332, speaks for
14 itself. To the extent a further response is required, denied.

15 13. This Paragraph asserts legal conclusions and questions of law to be determined
16 by the Court, to which no response is required. To the extent a further response is required,
17 Defendants admit only that venue is proper in this District.

18 PARTIES

19 14. Defendants admit that The GEO Group, Inc. has attested that it is a corporation
20 organized and existing under the laws of the State of Florida, with its principal place of business
21 in Boca Raton, Florida.

22 15. Defendants admit that Jay R. Inslee is a citizen of Washington and the Governor
23 of the State of Washington. Defendants accept Plaintiff's admission that Governor Inslee is sued
24 in his official capacity. Defendants further admit that the responsibilities and duties of the
25 Governor are as set forth in the Washington Constitution and state law. To the extent that the
26

Paragraph contains legal conclusions, no answer is required. Defendants deny each and every remaining factual allegation in the Paragraph.

16. Defendants admit that Robert W. Ferguson is a citizen of Washington and the Attorney General of the State of Washington. Defendants accept Plaintiff's admission that Attorney General Ferguson is sued in his official capacity. Defendants further admit that the responsibilities and duties of the Attorney General are as set forth in the Washington Constitution. To the extent that the Paragraph contains legal conclusions, no answer is required. State Defendants deny each and every remaining factual allegation in the Paragraph.

FACTUAL ALLEGATIONS

I. HB 1470

17. Admit.

18. Admit.

19. Defendants admit only that this Paragraph has quoted a portion of the Revised Code of Washington, which otherwise speaks for itself. To the extent a further response is required, denied.

20. Defendants admit only that the primary House sponsor testified at a March 13, 2023 Public Hearing of the Washington State Senate Human Services Committee hearing on HB 1470. To the extent a further response is required, denied.

21. Defendants admit only that there was a March 30, 2023 Public Hearing of the Washington Senate Ways and Means Committee regarding HB 1470. To the extent a further response is required, denied.

22. Defendants admit only that a Washington Multiple Agency Fiscal Note Summary accompanied HB 1470. Defendants deny the Fiscal Note acknowledged HB 1470 intentionally targeted the Northwest ICE Processing Center (NWIPC). To the extent a further response is required, denied.

1 23. Defendants admit only that this Paragraph has quoted a portion of HB 1470
2 section 2, which otherwise speaks for itself. To the extent a response is required, denied.

3 24. Defendants admit only that this Paragraph has quoted a portion of HB 1470
4 section 2, which otherwise speaks for itself. To the extent a response is required, denied.

5 25. Defendants admit only that this Paragraph has quoted a portion of HB 1470
6 section 3, which otherwise speaks for itself. To the extent a response is required, denied.

7 26. Defendants admit only that this Paragraph has quoted a portion of HB 1470
8 section 2, which otherwise speaks for itself. To the extent a response is required, denied.

9 27. Defendants admit only that this Paragraph has quoted a portion of HB 1470
10 section 4, which otherwise speaks for itself, and that Section 4 does not apply to valid contracts
11 in effect prior to January 1, 2023, for the duration of that contract. To the extent a response is
12 required, denied.

13 28. Defendants admit only that this Paragraph has quoted a portion of HB 1470
14 section 4, which otherwise speaks for itself. To the extent a response is required, denied.

15 29. Defendants admit only that this Paragraph has quoted a portion of HB 1470
16 section 5, which otherwise speaks for itself. To the extent a response is required, denied.

17 30. Defendants admit only that this Paragraph has quoted a portion of HB 1470
18 section 5, which otherwise speaks for itself. To the extent a response is required, denied.

19 31. Defendants admit only that this Paragraph has quoted a portion of HB 1470
20 section 6, which otherwise speaks for itself. To the extent a response is required, denied.

21 32. Defendants admit only that this Paragraph has quoted a portion of HB 1470
22 section 6, which otherwise speaks for itself. To the extent a response is required, denied.

23 33. Defendants admit only that this Paragraph has quoted a portion of HB 1470
24 section 8, which otherwise speaks for itself. To the extent a response is required, denied.

25 34. Defendants admit only that this Paragraph has quoted a portion of HB 1470
26 section 9, which otherwise speaks for itself. To the extent a response is required, denied.

35. Defendants admit only that this Paragraph has quoted a portion of HB 1470 section 10, which otherwise speaks for itself. To the extent a response is required, denied.

II. U.S. Immigration and Customs Enforcement Detention Facilities

36. Defendants are without information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies.

37. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. The cited statutes and authorities, 8 U.S.C. §§ 1225(b)(1)(B)(ii), 1225(b)(2)(A), 1226(a), 1226(c); and *Jennings v. Rodriguez*, 138 S. Ct. 830, 836–38 (2018), speak for themselves.

38. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. The cited statutes, 6 U.S.C. § 112(b)(2) and 28 U.S.C. § 530C(a)(4), speak for themselves.

39. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. The cited statute, 8 U.S.C. § 1231(g)(1)-(2), speaks for itself.

40. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. The case citations and statutes in both the text and footnote speak for themselves.

41. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. To the extent a response is required, denied. Defendants admit that *United States v. California*, 921 F.3d 865, 882 n.7 (9th Cir. 2019) is a case citation, which speaks for itself.

42. Admit.

43. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. To the extent a response is required, denied.

1 Defendants are without information sufficient to form a belief as to the truth of the remaining
 2 allegations in this Paragraph, and therefore denies.

3 44. This Paragraph asserts legal conclusions and questions of law to be determined
 4 by the Court, to which no response is required. To the extent a response is required, denied.
 5 Defendants are without information sufficient to form a belief as to the truth of the remaining
 6 allegations in this Paragraph, and therefore denies.

7 45. This Paragraph asserts legal conclusions and questions of law to be determined
 8 by the Court, to which no response is required. To the extent a response is required, denied.
 9 Defendants are without information sufficient to form a belief as to the truth of the remaining
 10 allegations in this Paragraph, and therefore denies.

11 **III. Washington's Sole Dedicated ICE Facility: Northwest ICE Processing Center**

12 46. Defendants admit that there is a federal detention facility in the State of
 13 Washington located at 1623 East J Street in Tacoma. Defendants lack sufficient information to
 14 admit or deny the remaining factual allegations in the Paragraph, and therefore denies.

15 47. Defendants lack sufficient information to admit or deny the factual allegations in
 16 the Paragraph, and therefore denies.

17 48. Defendants lack sufficient information to admit or deny the factual allegations in
 18 the Paragraph, and therefore denies.

19 49. Defendants lack sufficient information to admit or deny the factual allegations in
 20 the Paragraph, and therefore denies.

21 50. Defendants lack sufficient information to admit or deny the factual allegations in
 22 the Paragraph, and therefore denies.

23 51. Defendants lack sufficient information to admit or deny the factual allegations in
 24 the Paragraph, and therefore denies.

25 52. Defendants lack sufficient information to admit or deny the factual allegations in
 26 the Paragraph, and therefore denies.

53. Defendants affirmatively contend that the Performance Based National Detention Standards (PBNDS) speak for themselves. Defendants lack sufficient information to admit or deny the remaining factual allegations in the Paragraph, and therefore denies.

54. The Joint Explanatory Statement and House Report 114-668, speaks for itself. Defendants lack sufficient information to admit or deny the remaining factual allegations in the Paragraph, and therefore denies.

55. Defendants admit only that this Paragraph has quoted a portion of the PBNDS, which otherwise speaks for itself. To the extent a response is required, denied.

56. Defendants admit only that this Paragraph has described the PBNDS, which otherwise speaks for itself. To the extent a response is required, denied.

57. Defendants admit only that this Paragraph has quoted a portion of the PBNDS, which otherwise speaks for itself. To the extent a response is required, denied.

58. Defendants admit only that this Paragraph has quoted a portion of the PBNDS, which otherwise speaks for itself. To the extent a response is required, denied.

59. Defendants admit only that this Paragraph has quoted a portion of GEO's contract with ICE, which otherwise speaks for itself. To the extent a response is required, denied.

60. Defendants admit only that this Paragraph has quoted a portion of the PBNDS, which otherwise speaks for itself. To the extent a response is required, denied.

61. Defendants admit only that this Paragraph has quoted a portion of the PBNDS, which otherwise speaks for itself. To the extent a response is required, denied.

62. This Paragraph asserts legal conclusions and questions of law to be determined by the Court, to which no response is required. To the extent a further response is required, denied.

IV. Financial Impact of HB 1470 on GEO

63. The cited attachment speaks for itself. To the extent the Paragraph contains legal arguments and conclusions, no response is required.

1 64. This Paragraph asserts legal conclusions and questions of law to be determined
2 by the Court, to which no response is required. To the extent a response is required, Defendants
3 are without information sufficient to form a belief as to the truth of the allegations in this
4 Paragraph, and therefore denies.

5 65. This Paragraph asserts legal conclusions and questions of law to be determined
6 by the Court, to which no response is required. To the extent a response is required, Defendants
7 are without information sufficient to form a belief as to the truth of the allegations in this
8 Paragraph, and therefore denies.

9 66. This Paragraph asserts legal conclusions and questions of law to be determined
10 by the Court, to which no response is required. To the extent a response is required, Defendants
11 are without information sufficient to form a belief as to the truth of the allegations in this
12 Paragraph, and therefore denies.

13 **COUNT I: VIOLATION OF INTERGOVERNMENTAL IMMUNITY**
14 **(DIRECT REGULATION OF THE FEDERAL GOVERNMENT)**

15 67. Defendants restate and incorporate by reference their responses to the allegations
16 of the preceding paragraphs in the Complaint.

17 68. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
18 to this Paragraph is required.

19 69. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
20 to this Paragraph is required.

21 70. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
22 to this Paragraph is required.

23 71. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
24 to this Paragraph is required.

25 72. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
26 to this Paragraph is required.

1 73. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
2 to this Paragraph is required.

3 **COUNT II: VIOLATION OF INTERGOVERNMENTAL IMMUNITY**
4 **(IMPERMISSIBLE DISCRIMINATION)**

5 74. Defendants restate and incorporate by reference their responses to the allegations
6 of the preceding paragraphs in the Complaint.

7 75. Defendants admit only that this Paragraph cites portions *North Dakota v. United*
8 *States*, 495 U.S. 423, 435, (1990), and *United States v. City of Arcata*, 629 F.3d 986, 991 (9th
9 Cir. 2010), which speak for themselves. To the extent a further response is required, denied.

10 76. This Paragraph asserts legal conclusions and questions of law to be determined
11 by the Court, to which no response is required. Defendants admit only that *United States v.*
12 *Washington*, 142 S. Ct. 1976 (2022) is a case citation, which speaks for itself. To the extent a
13 response is required, denied.

14 77. This Paragraph asserts legal conclusions and questions of law to be determined
15 by the Court, to which no response is required. To the extent a response is required, denied.

16 78. This Paragraph asserts legal conclusions and questions of law to be determined
17 by the Court, to which no response is required. To the extent a response is required, denied.

18 79. This Paragraph asserts legal conclusions and questions of law to be determined
19 by the Court, to which no response is required. To the extent a response is required, denied.

20 80. This Paragraph asserts legal conclusions and questions of law to be determined
21 by the Court, to which no response is required. To the extent a response is required, denied.

22 81. This Paragraph asserts legal conclusions and questions of law to be determined
23 by the Court, to which no response is required. To the extent a response is required, State
24 Defendants admit this Paragraph provides hyperlinks to two recordings of state legislative
25 committee hearings, and otherwise denies the remaining allegations of this Paragraph.
26

1 82. This Paragraph asserts legal conclusions and questions of law to be determined
 2 by the Court, to which no response is required. To the extent a response is required, Defendants
 3 admit this Paragraph cites the Multiple Agency Fiscal Note Summary for HB 1470, and
 4 otherwise denies the remaining allegations of this Paragraph.

5 83. This Paragraph asserts legal conclusions and questions of law to be determined
 6 by the Court, to which no response is required. To the extent a response is required, denied.

7 **COUNT III: FEDERAL PREEMPTION**
 8 **(FIELD PREEMPTION)**

9 84. Defendants restate and incorporate by reference their responses to the allegations
 10 of the preceding paragraphs in the Complaint.

11 85. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 12 to this Paragraph is required.

13 86. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 14 to this Paragraph is required.

15 87. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 16 to this Paragraph is required.

17 88. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 18 to this Paragraph is required.

19 89. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 20 to this Paragraph is required.

21 90. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 22 to this Paragraph is required.

23 91. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 24 to this Paragraph is required.

25 92. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
 26 to this Paragraph is required.

1 93. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
2 to this Paragraph is required.

3 94. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
4 to this Paragraph is required.

5 95. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
6 to this Paragraph is required.

7 **COUNT IV: FEDERAL PREEMPTION**
8 **(CONFLICT PREEMPTION)**

9 96. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
10 to this Paragraph is required.

11 97. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
12 to this Paragraph is required.

13 98. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
14 to this Paragraph is required.

15 99. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
16 to this Paragraph is required.

17 **COUNT V: VIOLATION OF THE CONTRACTS CLAUSE**

18 100. Defendants restate and incorporate by reference their responses to the allegations
19 of the preceding paragraphs in the Complaint.

20 101. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
21 to this Paragraph is required.

22 102. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
23 to this Paragraph is required.

24 103. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response
25 to this Paragraph is required.
26

104. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response to this Paragraph is required.

105. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response to this Paragraph is required.

106. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response to this Paragraph is required.

107. The Court dismissed this claim with prejudice, *see* Dkt. #35, and so no response to this Paragraph is required.

PLAINTIFF’S PRAYER FOR RELIEF

This section of the Complaint asserts Plaintiff’s requests for relief, to which no response is required. To the extent a response is required, Defendants deny Plaintiff is entitled to the relief sought, and deny Plaintiff is entitled to a declaratory judgment, injunctive relief, any “reasonable attorneys’ fees, costs, and expenses,” or any other relief.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses to the Complaint and base these affirmative defenses upon their current knowledge and information. Defendants assert these affirmative defenses based on information presently available and in order to avoid waiver. Defendants reserve the right to withdraw any of these affirmative defenses or to supplement these defenses.

1. Plaintiff fails to state a claim upon which relief can be granted;
2. Plaintiff lacks standing;
3. Plaintiff’s claims are not ripe; and
4. Plaintiff’s claims are barred by sovereign immunity.

DEFENDANTS’ REQUEST FOR RELIEF

Defendants request that the Court:

1. Dismissal of the Complaint with prejudice;

2. Deny all relief that Plaintiff requests;
3. Grant Defendants the costs and disbursements of this action, together with attorneys' fees, to the extent permitted by law; and
4. Grant such additional relief as the Court may deem just and proper.

DATED this 29th day of April, 2024.

ROBERT W. FERGUSON
Attorney General

s/ Marsha Chien
MARSHA CHIEN, WSBA 47020
CRISTINA SEPE, WSBA 53609
Deputy Solicitors General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200
Marsha.Chien@atg.wa.gov
Cristina.Sepe@atg.wa.gov

ANDREW R.W. HUGHES, WSBA 49515
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
Andrew.Hughes@atg.wa.gov

*Attorneys for Defendants Governor Jay R. Inslee
and Attorney General Robert W. Ferguson*

CERTIFICATE OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 29th day of April 2024, at Olympia, Washington.

s/ Kelsi Zweifel
Kelsi Zweifel
Confidential Secretary
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-4111
Kelsi.Zweifel@atg.wa.gov